



FOREST TAX & STEWARDSHIP NEWS



Spring 2003

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The Current Policy on Mandatory Practices

Not every landowner in the Managed Forest Law or the Forest Tax Law program has a mandatory practice scheduled on their entry. However, the majority of entries in the law do have a mandatory practice that has to be completed. The best way for you to determine if you have a mandatory practice to be completed is to check your management plan. If you have a practice that is scheduled for this year or next year you need to be aware of the current policy that the DNR foresters will follow.

In past years the DNR foresters were very involved in helping landowners complete mandatory practices. That has changed due to the doubling in the number of new applications to the Managed Forest Law received in the past five years (from 2000 per year to over 4000 per year). The increased workload from these new applications has reduced the time that these people have available for this work. To meet the need for completing mandatory practices the DNR negotiated with Cooperating foresters (Consulting and Industrial foresters) to create a process to complete this necessary work. The goal of this agreement was to avoid any confusion for the landowners and to get the mandatory practices completed.

The process is a simple one where the Cooperating foresters are given a list of mandatory practices that are overdue and due in the current year and one year into the future. These foresters are given 60 days to review the list and contact landowners with a proposal to complete the practice. Some landowners may get more than one contact and must choose



the Cooperating forester that they want to work with. If the landowner gets one proposal and they do not find it satisfactory to them, they have an option. The option that is available to the landowner is to contact any private or industrial forester and get a proposal from them. The landowner can then have them help complete the mandatory practice when they get a satisfactory proposal.

The current policy is that only a private or industrial forester can assist the landowner, in completing a mandatory practice, if the landowner has received a proposal. DNR foresters are not given the option of helping a landowner complete the mandatory practice if a Cooperating forester has contacted the landowner.

If a landowner has not been contacted in the 60 day period by a Cooperating forester then the DNR forester can contact the landowner to complete the mandatory practice. Over most of the state the 60 day period has already started. The exact starting date of the 60 day period can vary from one county to another. The best way for a landowner, that would like to get the practice completed, to find out where that process is for their county is to contact the DNR forester that takes care of their county.

The current situation for mandatory practices is that there are over 7,700 practices that are overdue across the state. These practices are not spread evenly and some DNR foresters have much work to do to get all the practices completed. There is definitely a waiting list in some counties, so be patient. 🌲

Two Recent Circuit Court Decisions Regarding Managed Forest Law

The Dane County Circuit Court recently decided two cases in which Managed Forest Law (MFL) landowners sought administrative hearings on Withdrawal Orders issued by the Department of Natural Resources (DNR). In both cases DNR issued Orders withdrawing land from the MFL program for failing to meet MFL requirements. Each landowner asked DNR to hold an administrative hearing under s. 227.42, Stats., in which the owner could argue that DNR should not withdraw the land from the MFL program; DNR denied both hearing requests. Each appealed the DNR decision denying a hearing and asked the Court to order DNR to grant the owner a s. 227.42 hearing. The Court decided DNR properly denied both hearing requests, so the Withdrawal Orders remained in effect.

Although circuit court decisions create no precedent (i.e., establish no authority on which future cases can be decided), both cases are a reminder that landowners who do not comply with MFL requirements risk having their land withdrawn from MFL and incurring substantial tax liabilities as a result. Both cases also underscore the point that any landowner who appeals a DNR decision must ensure that he or she files a request for appeal properly and timely in order to obtain a hearing.

Dane County Circuit Court Case No. 2 CV 729 (decision issued Dec. 11, 2002).

In this case, DNR issued an Order on October 4, 2001 withdrawing land from the MFL program because the landowner recorded a plat for the land, which is a development or use of the land for a purpose incompatible with MFL. See s. 77.88(1)(b)4., Stats., and s. NR 46.15(18), Wis. Adm. Code. The Withdrawal Order contained appeal rights advising the landowner he had 30 days to seek an administrative hearing to appeal the withdrawal. The landowner asked for a hearing 54 days after the Withdrawal Order was issued, but DNR denied the hearing request because it was not filed within 30 days after the decision. The landowner filed a petition with the Court arguing that he had six months, not 30 days, from the decision date to seek a hearing. The Court held that the 30-day deadline applied and DNR properly denied the late hearing request.



Dane County Circuit Court Case No. 02 CV 1578 (decision issued Jan. 28, 2003).

In this case, DNR issued an Order on March 13, 2002 withdrawing land from the MFL program for repeated failures to comply with MFL law, including failing to file the new owner certification required when land is transferred. (Sec. 77.88(2)(e), Stats., requires a new owner of MFL land to file with DNR a certification of intent to comply with MFL law within 30 days after gaining ownership. S. 77.88(2)(f), Stats., states that DNR must withdraw transferred land from the MFL program if the new owner doesn't file the certification, and that the owner is not entitled to a hearing on an order withdrawing land for this reason.)

In January 2000, the prior owner transferred ownership of this MFL land via an unrecorded deed. Neither the prior or new owner notified DNR of the transfer until January 2001, a year later. Despite repeated DNR requests, the new owner did not file a completed certification until January 2002, two years after the transfer. By then, DNR had begun the withdrawal process and decided to proceed with withdrawal because of the long history of noncompliance with MFL law. DNR issued the Withdrawal Order and the landowner timely requested an administrative hearing on the Order. However, DNR denied the hearing request because s. 77.88(2)(f), Stats., says that an owner is not entitled to a hearing on withdrawals for failure to certify.

The landowner filed a petition with the Court arguing she was entitled to a hearing. She later dropped that argument to argue that DNR, by continuing to set deadlines for the landowner to file the certification, had waived the requirement to certify within 30 days of transfer. She also argued that because she finally filed a completed certification two years after it was due, DNR had abused its discretion by still including that ground in the Order. Finally, she argued that if the Withdrawal Order is valid, it should take effect two years earlier (when the withdrawal tax would have been much lower). The Court rejected all her arguments, decided that DNR had properly issued the Withdrawal Order, and thus the Order stayed in effect as issued. ❧

Protecting Your Forest from Gypsy Moth

Andrea Diss

Gypsy moth arrived in the state over ten years ago and it is now established in 32 counties in eastern Wisconsin. Where this pest is established, it goes through a cycle of low population for about ten years followed by a population explosion that causes heavy defoliation and typically lasts one to two years in any location. It is these population explosions, called outbreaks, which cause the damage to our forests that we are concerned about. While we can't prevent the eventual development of outbreaks, we can improve the health of our forests so that they suffer less mortality or growth loss

Do you need to be immediately concerned?

The gypsy moth is established in the eastern third of the state but outbreaks and defoliation will occur in June in only parts of that area. This past summer, defoliation was most severe in western Marinette Co. Scattered defoliation was also seen in Waupaca, Waushara, Portage, Waukesha and the greater Milwaukee area. Outbreaks are expected to develop in areas bordering those that were defoliated last summer with most of Marinette county at risk of defoliation along with adjoining areas of Oconto County down into Menominee County. Outbreaks severe enough to cause defoliation are also expected in eastern Portage, western Waupaca and northern Waushara county. Scattered patches of defoliation are expected in Waukesha county and the Milwaukee area.

Management Options for Woodlots

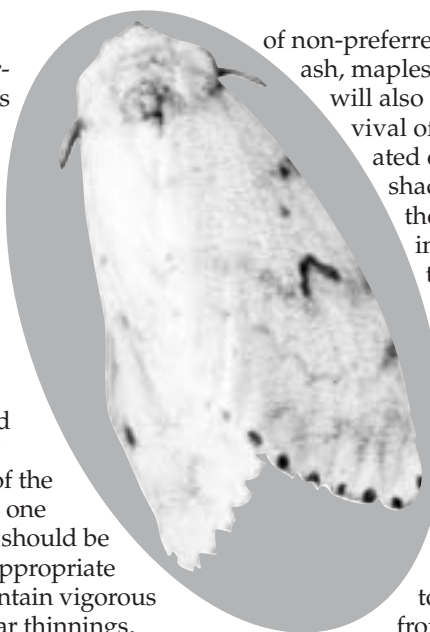
Management of damage from gypsy moth in woodlots is primarily by practicing silviculture to maintain good vigor and health. Manipulation of the species makeup of your woodlot can also reduce damage from gypsy moth. Silvicultural recommendations to minimize impact

of gypsy moth can be worked into your normal thinning practices or planting plans

Silviculture treatments to reduce losses from outbreaks

Vigorous deciduous trees can recover from even complete defoliation and produce a second set of leaves in mid July. Stressed or suppressed trees, in contrast, may die or suffer dieback of the crown following even one defoliation. Woodlots should be regularly thinned to appropriate stocking levels to maintain vigorous growth. During regular thinnings, remove stressed or suppressed trees to free up resources that can be better used by more vigorous neighbors. Also remove "wolf oaks" from the interior of your woodlots. These old oaks with low, horizontal branching, heavy, ridged bark and many holes or loose bark provide protection for gypsy moth from predators as well as an excellent food source. Presence of these wolf oaks in the interior of a stand provides a refuge for gypsy moth and could help increase the frequency of outbreaks in your stand. If you want to retain some "wolf oaks" for their abundant acorn protection, keep the ones along the edges of the woodlot and remove those out of the interior. The acorn production will be located where it will be most available to edge species such as deer and turkey and any increases in the gypsy moth population associated with those trees can be monitored.

If you are primarily interested in deciduous tree production, you can reduce losses from gypsy moth outbreaks by increasing the diversity of trees in your woodlot. Oaks are a favorite food of gypsy moth and will always be badly defoliated when outbreaks occur. Other, less favored tree species will not be as affected, however, and thus the losses from a mixed forest will be lower than in a solid stand of oak. The presence



of non-preferred species such as ash, maples, and hickories will also increase the survival of heavily defoliated oaks by providing shade and preventing the soil from drying out and further stressing the injured trees. If possible, reduce the overall proportion of gypsy moth favored species such as oak, basswood, white birch, and aspen below 30% in your woodlots to minimize losses from gypsy moth outbreaks.

Woodlot owners who focus on conifer production should remove understory or bordering oaks, hazelnut, service berry, white birch, aspen and witch hazel which can act as nurseries for gypsy moth caterpillars. The pest will start out feeding on the deciduous trees and shrubs and then move on to damage the pines. Solid stands of pines are rarely damaged beyond the outside rows of trees as gypsy moth caterpillars can't feed on the tough conifer needles for the first three weeks of life. After that, though, gypsy moth caterpillars relish many conifers including red, white, and jack pines as well as tamarack. Most conifers cannot recover from defoliation as readily as do deciduous trees so a greater degree of caution is warranted. Woodlot owners regenerating white pines under an aspen overstory should consider removing the aspen prior to development of an outbreak to prevent caterpillars moving onto the young pines and killing them.

For more information on silviculture to reduce damage from gypsy moth outbreaks, request Forestry Facts #83, Forest Management Strategies to Minimize the Impact of the Gypsy Moth, from any DNR Service Center. 🌲

Forest Inventory and Analysis in Wisconsin



Introduction

Wisconsin is currently conducting its 6th statewide forest inventory. The first USDA Forest Service forest inventory (FIA) of Wisconsin's forests was completed in 1936 with subsequent periodic inventories completed every 13 to 15 years until 1996. Beginning in 2000, data collection was changed from *periodic* to *annual* in order to get more accurate, up to date information on Wisconsin's forests. This means that every year inventory foresters will be in

Wisconsin's forests measuring about 20% of the plots in the state, completing the full inventory in five years, then immediately beginning the next five-year cycle.

Field Data Collection

Approximately 1,900 plots are measured each year. Data collection in the field takes place throughout the year and in all kinds of weather. Some of the information collected includes tree diameter, tree height, log length and grade, tree health (damages, crown ratio and crown position); site data (aspect, slope, forest type) and harvesting information.

Data collection is non-destructive, and crews leave behind only small pins marking the center of each plot, and a thin line of paint on the trees measured that looks like caulk. (At the request of the landowner, crews will use neither pins nor paint.) These help the next crew re-locate and identify the same trees for re-measurement five years later.

Private Lands

Because only 30% of the State's forest land is publicly held, 70% of the FIA plots fall on private lands. When a plot is located on private land, permission must be received from the landowner before a crew can access the plot. This is true even for those private lands that are open to certain types of public access under Wisconsin's managed forest tax laws.

In addition to requesting permission to measure the standard plot, permission may also be required by field crew supervisors to do quality checks, or during the summer months to determine Habitat Type on the plot.

Since the purpose of the FIA program is to accurately portray the growth, health and utilization of Wisconsin's forests, we do not interfere with the management of the property, and future changes on the plot such as tree harvesting or building construction are not a concern. In fact, we encourage landowners to treat the FIA plot no differently than any other location on their woodland. Change is normal in our forests and change over time and trends are major factors that we want to monitor.

Data Analysis and Confidentiality

Many landowners that are contacted for permission express concerns that FIA may be critical of their land management practices, or that we will report back to other agencies within the DNR or Forest Service. Landowners should rest assured however—*information gathered on FIA plots is strictly confidential, and is not included in the Freedom of Information Act.*

Data collected on FIA plots is used only in the FIA program. There is no third party disclosure of plot locations or individual plot data, nor do we share information with other agencies or programs.

Summary

FIA is an important tool in gathering information on Wisconsin's forests. The data is used by a wide array of people in industry, education and public service. FIA data is also used extensively to monitor current conditions and trends in Wisconsin's forests. In addition, an accurate portrayal of Wisconsin's forest resources could help to attract business to Wisconsin and help foster a thriving economy.

It is important to remember that FIA data is held in the strictest confidentiality: plot information such as landowner, location and tree data are never given out to outside agencies, and only aggregate summaries are published for public perusal.

Lastly, we at FIA would like to thank all those landowners who already participate in the FIA program by allowing plots to be established on their land. We also encourage those who will be contacted for the first time in the coming years to also participate in the program. Hats off to all you who help make FIA a success in Wisconsin!

For more information on FIA in Wisconsin, please contact:

Paul Mueller, Lumberjack RC&D Council, Inc.
(715) 362-1170
or
Vern Everson, WIDNR
(608) 266-2196



Enforcement Update

A landowner's obligations do not end after their land is entered under the Managed Forest Law (MFL) or Forest Crop Law (FCL); in fact it's just the beginning. They are obligated to follow the laws including completing the mandatory practices in the management plan/schedule prepared for the property, completing cutting notices and reports when harvesting timber, paying all taxes (yield or severance, annual acreage share and closed acreage taxes, etc.), and when selling or withdrawing land following the rules that apply. When the obligations are not met we are forced to withdraw the land (involuntary withdrawal) from the tax law program and assess a withdrawal tax against the land. The withdrawal tax for MFL is based upon the higher of two options. Either The total net property tax for the acreage under the law in the year prior to withdrawal multiplied by the number of years the land was under the law minus all payments for acreage share and yield taxes. Or 5% of the established stumpage value of the merchantable timber present minus all payments for acreage share and yield taxes.

The most common causes for involuntary withdrawals are failure to complete the mandatory practices that are specified in the management plan and partitioning (splitting) the ownership of the MFL or FCL land in a manner not allowed. For 2003 the tax unit processed 16 involuntary withdrawals that totaled \$99,734 which averaged over \$6,200 per withdrawal. *



**Have you moved? Or will you be moving?
Please let us know your new address.**

Mail all address changes to:

**Wisconsin Department of Natural Resources
PO Box 7963
Madison, WI 53707**

Go "Online" with DNR Forestry

Attention forest landowners, the DNR Forestry Website has a wealth of information for you!

In addition to basic information about the forest tax law program in which you're already enrolled, you can find most of the forms you would need for the tax law programs (including forms for cutting notice, Managed Forest Law withdrawal, and so on) at:
<http://www.dnr.state.wi.us/org/land/forestry/ftax/forms.htm>

The section of our site that is designed specifically for you is:
<http://www.dnr.state.wi.us/org/land/forestry/Private/index.htm>

This includes a wide variety of information on professional and financial assistance available to help you meet the goals for your woodlands. Learn how to establish, care for and harvest your forest on these pages. A useful feature of this section is the "Forestry Assistance Locator" that allow you to search the directory of DNR and cooperating foresters to find professional forestry assistance that best meets your needs:
<http://www.dnr.state.wi.us/org/land/forestry/Private/Assist/coopforesters/index.asp>

Do you need help identifying trees on your property? Look in this section to find a list of Wisconsin tree species by common and scientific names as well as a simple guide to help you determine what kind of trees you have:
<http://www.dnr.state.wi.us/org/land/forestry/treeid/index.htm>



Trying to find a sawmill or other wood processing industry in the state? You can access that information along with fact sheets on the distribution of various types of forests in the state and the primary uses of the major commercial tree species on this page:
<http://www.dnr.state.wi.us/org/land/forestry/usesof/fproducts.htm>

You can also find voluntary guidelines to help you minimize nonpoint water pollution from your forest management activities. These "Forestry Best Management Practices for Water Quality" are available at:
<http://www.dnr.state.wi.us/org/land/forestry/usesof/bmp/bmp.htm>

You can also find guides to managing shoreland and building forest access roads online:
<http://www.dnr.state.wi.us/org/land/forestry/usesof/bmp/bmpownerguides.htm>

If you're planning to do any planting on your property, you'll want to check out the "nursery" section of our Website. Not only will you find the order form for purchasing seedlings from DNR Forestry, but also good information about preparing the land before the planting and proper planting techniques here:
<http://www.dnr.state.wi.us/org/land/forestry/nursery/index.htm>

Are you concerned about gypsy moth, forest tent caterpillar, oak wilt or other forest health issues? Learn about forest insects, diseases and exotic invasive species on our site at:
<http://www.dnr.state.wi.us/org/land/forestry/fh/index.htm>

Did you know that you can purchase aerial photographs of your property? Information on how to order the photos and how you might use them, along with guidelines for interpreting the photos, are here:

<http://www.dnr.state.wi.us/org/land/forestry/airphoto/index.htm>

If you're thinking about doing any burning on your land, you'll want to check out current weather conditions and find out whether burning permits are required for your area. Find this and important fire safety information (including how to protect your home from wildfire) online:
<http://www.dnr.state.wi.us/org/land/forestry/fire/>

And for further information, visit the "resources" section of our Website to find a wide variety of online publications and links to other sites for more forestry-related information on the Internet.
<http://www.dnr.state.wi.us/org/land/forestry/resources.htm>

Thanks for visiting us online if you have Internet access! Over the next several months we will be revising the way the information on our site is organized. Since you and the other 260,000 private forest landowners in Wisconsin are a very important audience of our Website, we would appreciate your feedback in helping us ensure that it is a useful tool for you. Do you have suggestions for additional information you would expect to find on our site? Did you have problems finding anything in the forestry section of the DNR Website? Any feedback about our site will be greatly appreciated and can be sent to:

Forestry.Webmail@dnr.state.wi.us ✉

Forest Landowner Conference Dates

March 28

WI Forest Productivity Council Friday Night Tax Fry at Country Inn & Suites, Hayward

Topic: *Establishment and Use of Timber Basis*
6–9 P.M., \$30/person

Contact WFPC to register—
wfpc@newnorth.net
715/369-3475

April 24

WI Forest Productivity Council Friday Night Tax Fry at Holiday Inn, Tomah

Topic: *Estate Taxes and Planning*
6–9 P.M., \$30/person

Contact WFPC to register—
wfpc@newnorth.net
715/369-3475

May 1

WI Forest Productivity Council Friday Night Tax Fry at Belvedere Supper Club, Marshfield

Topic: *Estate Taxes and Planning*
6–9 P.M., \$30/person

Contact WFPC to register—
wfpc@newnorth.net
715/369-3475

June 7

Taking the Pulse of Your Woods—Session 1 at the Seno Woodland Education Center, Burlington. Landowner workshop designed to encourage stewardship and management of your woods based on the WI DNR Voluntary Site-Level Forest Management Guidelines. Covers forest management principles and basics. Optional Session 2 is held on September 13.

\$25/person

Contact Kendra Johncock at—
kendra@elknet.net
262/743-1694.



September 6–18

Master Woodland Steward workshop at the Seno Woodland Education Center, Burlington. For woodland owners who are interested in taking the next step to increase their knowledge and skills to become better stewards of their land. You must attend all seven sessions and volunteer a minimum of 30 hours as a forestry stewardship resource person in your community to receive certification.

Class schedule:

Saturday, September 6, 9 A.M.–3:30 P.M.
Monday, September 15, 6:30–9 P.M.
Monday, September 22, 6:30–9 P.M.
Saturday, September 27, 9 A.M.–3:30 P.M.
Monday, October 6, 6:30–9 P.M.
Monday, October 13, 6:30–9 P.M.
Saturday, October 18, 9 A.M.–7 P.M.

Contact Kendra Johncock—
kendra@elknet.net
262/743-1694.

Sept 13

Taking the Pulse of Your Woods—Session 2 at the Seno Woodland Education Center, Burlington. Landowner workshop designed to encourage stewardship and management of your woods based on the WI DNR Voluntary Site-Level Forest Management Guidelines. Session 2 will emphasize developing a stewardship plan using the elements of sustainable forestry. Optional Session 1 is held on June 7.

\$25/person

Contact Kendra Johncock—
kendra@elknet.net
262/743-1694.

September 18–21

Wisconsin Woodland Owners Association 2003 Annual Meeting at Telemark Lodge in Cable. WWOA members are invited to a four day conference to meet fellow woodland owners. Learn more about woodland management and northern Wisconsin through tours, speakers, exhibitors, and a field day.

See WWOA's website for more information—
www.wisconsinwoodlands.org
715/346-4798

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